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1
2 An act relating to the protection of vulnerable
3 investors; amending s. 415.1034, F.S.; requiring
4 securities dealers, investment advisers, and
5 associated persons to immediately report knowledge or
6 suspicion of abuse, neglect, or exploitation of
7 vulnerable adults to the Department of Children and
8 Families' central abuse hotline; creating s. 517.34,
9 F.S.; providing definitions; providing legislative
10 findings and intent; authorizing dealers and
11 investment advisers to delay certain disbursements or
12 transactions based on a reasonable belief of financial
13 exploitation of a specified adult under certain
14 circumstances; requiring a dealer or investment
15 adviser to notify certain persons and the Office of
16 Financial Regulation of such delays within a specified
17 timeframe; requiring a dealer or investment adviser to
18 review the basis for a reasonable belief of financial
19 exploitation of a specified adult; specifying the
20 expiration of such delays; authorizing a dealer or
21 investment adviser to extend a delay under certain
22 circumstances; requiring a dealer or investment
23 adviser to notify the office within a specified
24 timeframe after such extension begins; providing that
25 the length of such delays may be shortened or extended

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26 | by a court of competent jurisdiction; providing that
 27 | delays may be terminated by dealers or investment
 28 | advisers under certain circumstances; requiring that
 29 | certain records be made available to the office;
 30 | providing immunity from administrative and civil
 31 | liability for dealers, investment advisers, and
 32 | associated persons who in good faith and exercising
 33 | reasonable care comply with specified provisions;
 34 | requiring dealers and investment advisers to develop
 35 | certain training policies or programs; requiring
 36 | dealers and investment advisers to conduct annual
 37 | training for associated persons and maintain written
 38 | records of compliance with such requirement; requiring
 39 | dealers and investment advisers to develop, maintain,
 40 | and enforce certain written procedures; providing
 41 | construction; providing an effective date.

42 |

43 | Be It Enacted by the Legislature of the State of Florida:

44 |

45 | Section 1. Paragraph (a) of subsection (1) of section
 46 | 415.1034, Florida Statutes, is amended to read:

47 | 415.1034 Mandatory reporting of abuse, neglect, or
 48 | exploitation of vulnerable adults; mandatory reports of death.—

49 | (1) MANDATORY REPORTING.—

50 | (a) Any person, including, but not limited to, any:

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- 51 1. Physician, osteopathic physician, medical examiner,
 52 chiropractic physician, nurse, paramedic, emergency medical
 53 technician, or hospital personnel engaged in the admission,
 54 examination, care, or treatment of vulnerable adults;
- 55 2. Health professional or mental health professional other
 56 than one listed in subparagraph 1.;
- 57 3. Practitioner who relies solely on spiritual means for
 58 healing;
- 59 4. Nursing home staff; assisted living facility staff;
 60 adult day care center staff; adult family-care home staff;
 61 social worker; or other professional adult care, residential, or
 62 institutional staff;
- 63 5. State, county, or municipal criminal justice employee
 64 or law enforcement officer;
- 65 6. Employee of the Department of Business and Professional
 66 Regulation conducting inspections of public lodging
 67 establishments under s. 509.032;
- 68 7. Florida advocacy council or Disability Rights Florida
 69 member or a representative of the State Long-Term Care Ombudsman
 70 Program; ~~or~~
- 71 8. Bank, savings and loan, or credit union officer,
 72 trustee, or employee; or
- 73 9. Dealer, investment adviser, or associated person under
 74 chapter 517,
- 75

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76 | who knows, or has reasonable cause to suspect, that a vulnerable
 77 | adult has been or is being abused, neglected, or exploited must
 78 | ~~shall~~ immediately report such knowledge or suspicion to the
 79 | central abuse hotline.

80 | Section 2. Section 517.34, Florida Statutes, is created to
 81 | read:

82 | 517.34 Protection of specified adults.—

83 | (1) As used in this section, the term:

84 | (a) "Financial exploitation" means the wrongful or
 85 | unauthorized taking, withholding, appropriation, or use of
 86 | money, assets, or property of a specified adult; or any act or
 87 | omission by a person, including through the use of a power of
 88 | attorney, guardianship, or conservatorship of a specified adult,
 89 | to:

90 | 1. Obtain control over the specified adult's money,
 91 | assets, or property through deception, intimidation, or undue
 92 | influence to deprive him or her of the ownership, use, benefit,
 93 | or possession of the money, assets, or property; or

94 | 2. Convert the specified adult's money, assets, or
 95 | property to deprive him or her of the ownership, use, benefit,
 96 | or possession of the money, assets, or property.

97 | (b) "Specified adult" means a natural person 65 years of
 98 | age or older, or a vulnerable adult as defined in s. 415.102.

99 | (c) "Trusted contact" means a natural person 18 years of
 100 | age or older who the account owner has expressly identified and

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101 who is recorded in a dealer's or investment adviser's books and
102 records as the person who may be contacted about the account.

103 (2) The Legislature finds that many persons in this state,
104 because of age or disability, are at increased risk of financial
105 exploitation and loss of their assets, funds, investments, and
106 investment accounts. The Legislature further finds that senior
107 investors in this state are at a statistically higher risk of
108 being targeted for financial exploitation, regardless of
109 diminished capacity or other disability, because of their
110 accumulation of substantial assets and wealth compared to
111 younger age groups. In enacting this section, the Legislature
112 recognizes the freedom of specified adults to manage their
113 assets, make investment choices, and spend their funds, and
114 intends that such rights may not be infringed absent a
115 reasonable belief of financial exploitation as provided in this
116 section. The Legislature therefore intends to provide for the
117 prevention of financial exploitation of such persons. The
118 Legislature intends to encourage the constructive involvement of
119 securities dealers, investment advisers, and associated persons
120 who take action based upon the reasonable belief that specified
121 adults with investment accounts have been or are the subject of
122 financial exploitation, and to provide securities dealers,
123 investment advisers, and associated persons immunity from
124 liability for taking actions as authorized herein. The
125 Legislature intends to balance the rights of specified adults to

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126 direct and control their assets, funds, and investments and
127 exercise their constitutional rights consistent with due process
128 with the need to provide securities dealers, investment
129 advisers, and associated persons the ability to place narrow,
130 time-limited restrictions on these rights in an effort to
131 decrease specified adults' risk of loss due to abuse, neglect,
132 or financial exploitation.

133 (3) A dealer or investment adviser may delay a
134 disbursement or transaction of funds or securities from an
135 account of a specified adult or an account for which a specified
136 adult is a beneficiary or beneficial owner if all of the
137 following apply:

138 (a) The dealer or investment adviser reasonably believes
139 that financial exploitation of the specified adult has occurred,
140 is occurring, has been attempted, or will be attempted in
141 connection with the disbursement or transaction.

142 (b) Not later than 3 business days after the date on which
143 the delay was first placed, the dealer or investment adviser
144 notifies in writing all parties authorized to transact business
145 on the account and any trusted contact on the account, using the
146 contact information provided for the account, with the exception
147 of any party the dealer or investment adviser reasonably
148 believes has engaged in, is engaging in, has attempted to engage
149 in, or will attempt to engage in the suspected financial
150 exploitation of the specified adult. The notice, which may be

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151 provided electronically, must provide the reason for the delay.
 152 (c) Not later than 3 business days after the date on which
 153 the delay was first placed, the dealer or investment adviser
 154 notifies the office of the delay electronically on a form
 155 prescribed by commission rule. The form must be consistent with
 156 the purposes of this section and may include only the following
 157 information:
 158 1. The date on which the notice is submitted to the
 159 office.
 160 2. The date on which the delay was first placed.
 161 3. The following information about the specified adult:
 162 a. Gender.
 163 b. Age.
 164 c. Zip code of residence address.
 165 4. The following information about the dealer or
 166 investment adviser who placed the delay:
 167 a. Name.
 168 b. Title.
 169 c. Firm name.
 170 d. Business address.
 171 5. A section with the following questions for which the
 172 only allowable responses are "Yes" or "No":
 173 a. Is financial exploitation of a specified adult
 174 suspected in connection with a disbursement or transaction?
 175 b. Are funds currently at risk of being lost?

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 177 The form must contain substantially the following statement in
 178 conspicuous type: "The office may take disciplinary action
 179 against any person making a knowing and willful
 180 misrepresentation on this form."

181 (d) The dealer or investment adviser immediately initiates
 182 an internal review of the facts and circumstances that caused
 183 the dealer or investment adviser to reasonably believe that the
 184 financial exploitation of the specified adult has occurred, is
 185 occurring, has been attempted, or will be attempted.

186 (4) A delay on a disbursement or transaction under
 187 subsection (3) expires 15 business days after the date on which
 188 the delay was first placed. However, the dealer or investment
 189 adviser may extend the delay for up to 10 additional business
 190 days if the dealer's or investment adviser's review of the
 191 available facts and circumstances continues to support such
 192 dealer's or investment adviser's reasonable belief that
 193 financial exploitation of the specified adult has occurred, is
 194 occurring, has been attempted, or will be attempted. A dealer or
 195 investment adviser that extends a delay must notify the office
 196 on a form prescribed by commission rule not later than 3
 197 business days after the date on which the extension was applied.
 198 The notice must identify the dealer or investment adviser that
 199 extended the delay and the date on which the delay was
 200 originally made. The length of the delay may be shortened or

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201 extended at any time by a court of competent jurisdiction. This
 202 subsection does not prevent a dealer or investment adviser from
 203 terminating a delay after communication with the parties
 204 authorized to transact business on the account and any trusted
 205 contact on the account.

206 (5) A dealer or investment adviser must make available to
 207 the office, upon request, all records relating to a delay placed
 208 by the dealer or investment adviser pursuant to this section, as
 209 prescribed by commission rule.

210 (6) A dealer, an investment adviser, or an associated
 211 person who in good faith and exercising reasonable care complies
 212 with this section is immune from any administrative or civil
 213 liability that might otherwise arise from such delay in a
 214 disbursement or transaction in accordance with this section.
 215 This subsection does not supersede or diminish any immunity
 216 granted under chapter 415.

217 (7) Before placing a delay on a disbursement or
 218 transaction pursuant to this section, a dealer or an investment
 219 adviser must do all of the following:

220 (a) Develop training policies or programs reasonably
 221 designed to educate associated persons on issues pertaining to
 222 financial exploitation.

223 (b) Conduct training for all associated persons at least
 224 annually and maintain a written record of all trainings
 225 conducted.

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226 (c) Develop, maintain, and enforce written procedures
 227 regarding the manner in which suspected financial exploitation
 228 is reviewed internally, including, if applicable, the manner in
 229 which suspected financial exploitation is required to be
 230 reported to supervisory personnel.

231 (8) Absent a reasonable belief of financial exploitation
 232 as provided in this section, this section does not alter a
 233 dealer's, an investment adviser's, or an associated person's
 234 obligation to comply with instructions from a client to buy or
 235 sell securities, disburse funds or transfer securities from an
 236 account, close an account, or transfer an account to another
 237 dealer, investment adviser, or associated person.

238 (9) This section does not create new rights for or impose
 239 new obligations on a dealer, an investment adviser, or an
 240 associated person under other applicable law. This section does
 241 not limit the right of a dealer, an investment adviser, or an
 242 associated person to otherwise refuse or place a delay on a
 243 disbursement or transaction under other applicable law or under
 244 an applicable customer agreement.

245 Section 3. This act shall take effect July 1, 2020.